82-536

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO._____

GENEVIEVE BERGER, Petitioner,

-against-

FRED BERGER, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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QUESTIONS PRESENTED

1. Does the denial of custody of the mother's children to the petitioner-mother based solely on probation and psychological evaluations made of the parties, with no expert testimony as to these evaluations from the authors, and where one evaluation made of petitioner was pursuant to a cursory examination of petitioner, and where these reports were almost a year old at the time of trial, violate the petitioner's due process right to confront adverse witnesses as is provided for by the Fourteenth Amendment of the United States Constitution?

2. Does the denial of the right to bring in a psychiatrist of petitioner's choice to testify as to his findings after evaluation, violate petitioner's due process right to present her own arguments and oral evidence as is provided for by the Fourteenth Amendment?

3. Does the deprivation of contact between the mother and children constitute a violation of due process?

4. Did the Supreme Court of New Jersey violate petitioner's due process rights in its failure to consider its own recent landmark custody case of Beck v. Beck, (1981) where New Jersey became the first court of last resort in the country to place its imprimatur on the concept of shared legal and physical custody even where it was not requested by either parent, all in violation of due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution?

5. Does the deprivation of children from their natural mother and the deprivation of the mother from the children constitute cruel and inhuman punishment as prohibited by the Eighth Amendment?

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1. Certiorari should be granted to review the holding of the Court below; the defendant-petitioner was denied custody of the children based on certain psychiatric and psychological reports. The doctors and psychologists who wrote the reports, did not testify and were not subject to cross-examination, as is required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court denied the defendant-petitioner the right to have a psychiatrist of her choice evaluate the family situation..... 7

2. In granting custody of the infant children of the parties' marriage, namely Ronald Berger, Lisa Berger and Jeffrey Berger, to the plaintiff-respondent husband, the New Jersey Superior Court rendered a decision contrary to the basic questions of the best interests of the children, relying upon stale reports, almost a year old, which had no current validity..... 12

3. The holding of the Court below, that the petitioner would be allowed visitation only under supervised and controlled conditions to be determined by an approved agency, is not justified by the weight of the evidence, and is not only not in the best interest of the children, but in effect, amounts to a complete deprivation of access to these children, as no agency has ever been appointed for such purpose, nor is such an agency known to exist. Thus, the order was impossible to fulfill, and the holding effectively denies the petitioner her right to visit her children, constituting a violation of due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution..... 14

4. The Supreme Court of New Jersey failed to consider its own recent landmark custody case of Beck v. Beck, (1981) where New Jersey became the first court of last resort in the country to place its imprimatur on the concept of shared legal and physical custody even where it was not requested by either parent, all in violation of due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution..... 14

5. In depriving the petitioner custody of her three children and any access thereto, and in depriving the three children of their mother, petitioner and her

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Trop v. Dulles, (1958) 356 U. S. 86, 2L Ed. 2d 630, 78 S. Ct. 590.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982
NO. _____

GENEVIEVE BERGER, Petitioner,

-against-

FRED BERGER, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioner respectfully prays that a writ of certiorari issue to review the final order of the Supreme Court of the State of New Jersey, entered herein on June 21, 1982 denying a review of this matter upon petitioner's application.

OPINION BELOW

The order of the Court below denied the petition for certification.

JURISDICTION

The final order of the New Jersey Supreme Court denying petitioner's application for certification

was made and entered on June 21, 1982 and is appended hereto, infra at p. 21. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

QUESTIONS PRESENTED

1. Does the denial of custody of the mother's children to the petitioner-mother based solely on probation and psychological evaluations made of the parties, with no expert testimony as to these evaluations from the authors, where one evaluation made of petitioner pursuant to a cursory examination of petitioner, and with these reports were almost a year old at the time of trial, violate the petitioner's due process right to confront adverse witnesses as is provided for by the Fourteenth Amendment of the United States Constitution?

2. Does the denial of the right to bring in a psychiatrist of petitioner's choice to testify as to his findings after evaluation, violate petitioner's due process right to present her own arguments and oral evidence as is provided for by the Fourteenth Amendment?

3. Does the deprivation of contact between the mother and children constitute a violation of due process?

4. Did the Supreme Court of New Jersey violate petitioner's due process rights in its faiure to consider its own recent landmark custody case of Beck v. Beck, (1981) where New Jersey became the first

court of last resort in the country to place its imprimatur on the concept of shared legal and physical custody even where it was not requested by either parent, all in violation of due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution?

5. Does the deprivation of children from their natural mother and the deprivation of the mother from the children constitute cruel and inhuman treatment as prohibited by the Eighth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

The principal constitutional provisions involved are the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the Eighth Amendment of the United States Constitution.

STATEMENT OF THE CASE

This petition devolves from a matrimonial action tried in the Chancery Division, Superior Court of New Jersey, Passaic County, during December, 1980.

The plaintiff husband is employed by American Cyanamid as a Process Engineer Supervisor, and has been employed by American Cyanamid for nearly twenty years. He has an undergraduate degree in Chemical Engineering from New York University, and Master's degree in Industrial Engineering, from New York University.

The defendant wife has been substantially unemployed during the marriage. At the present time she is attending college.

The parties were married on June 29, 1963 and three children were born of the marriage. Ronald, age 15 (born April 5, 1967), Lisa, age 13, (born April 7, 1969) and Jeffrey, age 9, (born September 20, 1971); all are unemancipated.

With respect to the question of custody, the issue of temporary custody had previously been adjudicated following a testimonial hearing in March, 1980, some nine months prior to the trial of the within matter. Over counsel's objection, (See Appendix, Excerpt from Transcript of Trial, p 55) medical and psychiatric reports were admitted into evidence in the proceedings without any professional or expert testimony being elicited, disregarding that the father physically and emotionally abused the children and the wife, travelled a great deal to advance his career while the mother solely raised the children. The only testimony received at trial was that of the parents of the children. The Court conducted an in-camera interview with the children, concluding that the two oldest children expressed a preference to remain with their father, while the youngest wished to remain with his mother. The trial court determined that the plaintiff-respondent father should have custody of the children, based not on firm evidence, which would

permit the Court to conclude that the placing of custody with the plaintiff-husband was in the best interests of the children, but upon its review of a probation report and certain psychological evaluations of the parties, where no expert testimony based on these reports were taken by the Court.

The trial court further determined that the defendant-petitioner could visit with the children only under the direct supervision of a social agency. Although the parents and the children were all living in the same home, the petitioner-mother was ordered to see her children through a non-existent agency. No social agency has been found to implement this order as of this date, effectively denying defendant-petitioner total access to her three children, and denying to the children access to their mother.

This matter came on for trial in the Superior Court of New Jersey before the Honorable Harold M. Nitto, Judge of the Superior Court. Judge Nitto rendered his opinion on December 22, 1980.

In late 1979, plaintiff-respondent filed his complaint for divorce in extreme cruelty. On or about January 10, 1980, defendant-petitioner filed her answer denying the allegations of the complaint, and seeking a judgment of separate maintenance by way of counterclaim for extreme cruelty.

Thereafter, a number of applications were made by both parties seeking relief from the lower

court. Two testimonial hearings were then held by the Court, the first on March 7, 1980, the second occurring on July 26, 1980. Pursuant to the first hearing, the plaintiff-respondent was granted temporary custody. The second hearing resulted in the defendant-petitioner leaving the marital dwelling and being permitted to visit her children only under specific conditions.

Following the trial, The Court entered judgment of divorce on January 13, 1981, awarding plaintiff a judgment of divorce; awarding custody of the children to the plaintiff-respondent, subject to defendant-petitioner's rights of visitation only under controlled and supervised conditions, and under the auspices of an approved agency to be approved by the Court, and not otherwise.

Thereafter, the defendant filed her Notice of Appeal from the Judgment of Divorce. Defendant then moved for a new trial, and for other relief, but her application was denied by the trial court.

On February 25, 1981, the Notice of Appeal was filed in this matter with the Superior Court of New Jersey, Appellate Division, where the Judgment of the Chancery Division entered in this matrimonial matter was affirmed; The New Jersey Supreme Court refused review.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

This case presents the issue of whether a moth-

er's children may be taken away from her based solely on the Court's review of evaluations and psychiatrist reports made of the parties almost a year prior to trial which reports were considered by the trial court over objection (See Appendix, Transcript of December 16, 17 and 18, 1980, p 55), where no expert was called upon to testify at the trial regarding said reports, (See Appendix, Transcript of December 16, 17 and 18, 1980, p 57) and the authors of the reports were not subject to cross-examination, with a consequent loss of due process.

It also presents the issue of the propriety of the Supreme Court in refusing to review a custody case when it had already determined, in its landmark custody case of Beck v. Beck, 86 N.J. 480, 432 A. 2d 63, that joint custody may be ordered on the court's own motion, and over objection, thus violating petitioner's due process rights. In addition, the question is raised as to whether under the circumstances herein, the determination of the trial court constitutes cruel and unusual punishment prohibited by the Eighth Amendment.

1. In 1965, the Confrontation Clause was held applicable to the states: Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 LED 2d 923 (1965). Clearly, due process requires that a party to an action must be permitted the right to confront adverse witnesses, pursuant to the Fourteenth Amendment.

The decision that was rendered in this case not only denied petitioner custody of her three children based on stale reports made after cursory examinations, and without the production of the petitioner's psychiatrists, but in effect, totally denied petitioner her children and visitation rights to her children.

The claim that the effect of the Court's decision was to deny petitioner her right to visit her children, stems from the fact that no such agency through which visitation may be arranged, and as provided for in the Court's decision, (See Appendix, Judge Nitto's final decision December 22, 1980, p 27) has ever been found, nor has any attempt been made by the Court to set up an appointment for this purpose, despite numerous attempts to do so by the petitioner. One such attempt was made by the petitioner, as may be seen in a letter from Monroe Y. Mann, petitioner's attorney, to the State of New Jersey, Department of Human Services Division of Youth and Family Services, dated January 12, 1982, which was ignored. (See Appendix page 43.

The trial Court relied upon reports, and over objection, admitted those reports into evidence. (See Appendix, Trial Transcript dated December 16, 17, & 18, p. 55). The reports contained allegations which can fairly be described as reactions of the defendant's (mother's) part to assaults committed outside of the marital home upon the children by the father, and reactions to what the defendant perceived as aberrant behavior

committed by the plaintiff. Although the defendant-petitioner presented her testimony most eloquently at trial, as to why she felt the best interest of the children would be served if they were in her custody, her testimony was ignored by the Court in reaching its conclusions in this matter. What was relied upon by the Court were reports of some vintage; however, the thrust of this petition lies in the fact that no expert was called upon to testify, denying petitioner her due process right to cross-examine doctors. Had the psychiatrists been produced, and cross-examination been permitted, and had the mother been permitted to produce her own psychiatrist, the childrens' welfare would have been served, and they may very well be still with their mother.

Cross-examination is "beyond doubt the greatest legal engine ever invented for the discovery of truth". 5 Wigmore §1367 p. 29.

Beginning with Snyder v. Massachusetts, 291, U. S. 97, 54 S. Ct. 330, 78 L Ed. 674 (1934), the Court began to speak of confrontation as an aspect of procedural due process, thus extending its applicability to state cases and to federal cases other than criminal. The deportation case of Bridges v. Wixon, 326, U. S. 135, 65 S. Ct. 1443, 89 L Ed. 2103 (1945), may be read broadly as imposing a strictly construed right of confrontation in all kinds of cases.

These cases clearly indicate the trend toward making the confrontation clause and the right to cross-examine adverse witnesses, a basic fundamenal right in civil cases as well as criminal cases.

The general preference for oral testimony is designed to provide opportunity for live cross-examination and observation of demeanor of a witness. **Carter-Wallace, Inc. v. Otte,** (1972, C.A. 2 N.Y.) 474 F 2d 529, cert den. 412 U.S. 929, 37 L Ed. 2d 156, 93 S.Ct. 2753.

In fact, on page 33 of Judge Nitto's decision of March 7, 1980, he refers to and bases his decision on reports and evaluations made by certain doctors. There was never an expert on the witness stand to testify in open Court as to how these reports were made, under what circumstances they were made, and if the situation among the parties had changed since these reports were last made.

Where the best interest of the child is a criteria to be met by the Court, every possible precaution should have been taken, so as to assure the Court and the parties involved, a full and fair hearing to what the best interest of the children would be. By denying the petitioner her opportunity to cross-examine these doctors, and particularly by denying petitioner the right to have a psychiatrist of her choice examine the parties involved, a violation of the Fourteenth Amendment due

process clause was committed, and we ask this Court to rectify this most unfortunate situation.

Judge Nitto's decision rendered on March 7, 1980, indicates on page 37 of the transcript of his decision that "...I wonder if the Court is given that kind of power." In reality, the Judge is calling into question whether the Court actually had the power to act as it did in denying a mother custody of her three children and reasonable access to them. Also on page 37 of Judge Nitto's decision of March 7, 1980, he refers to "a kind of a disturbance that borders in the area of the unknown." To base a decision on "kind of disturbance" calls into question the true basis for this Judge's decision, and questions the validity and unfounded reasoning that existed in mind.

Judge Nitto had ordered psychiatric examinations done on an "emergency" basis for the entire Berger family by Dr. Herbert Barken, Psychiatrist (See Appendix, Order 1, dated January 29, 1980, p. 51).

The second court order by Judge Nitto to the Probaiton Department pertaining to a psychiatric and diagnostic evaluations, and all investigations were ordered to be done on a "crash" basis to be completed within (7) seven days of the Order. (See Appendix, Order 2, dated January 29, 1980, p. 53).

There is nothing wrong with judicial expediency, but not when it jeopardizes a persons' due process rights, especially when this person is a mother

of three children in danger of losing her children upon a doctor's report. A judge's order to the Probation Department to examine a person and make an evaluation upon a "crash basis" cannot give the Probation Department the adequate time which is needed to evaluate such a critical situation.

Dr. Barken, being ordered by the Judge to make his evaluations on an "emergency basis" surely restricts the evaluation from the start.

In view of the above orders by Judge Nitto, and in view of the fact that these reports and evaluation were made on a "crash" and emergency basis, and then relied upon heavily in the Judge's final decision, leaves no doubt that petitioner's due process rights were violated.

The issue of how full and fair a hearing must be before custody of children may be denied to a natural mother, is of great importance and pecularly appropriate for the exercise of this Court's discretionary jurisdiction.

2. Aside from the obvious violation of due process rights, as seen when petitioner's right to confrontation was denied, petitioner was also denied the right to present a psychiatrist of her choice to examine the parties and testify as to the findings. This denial represents a violation of petitioner's due process right to present her own arguments and evidence.

On July 11, 1980, the defendant-petitioner made application to have the plaintiff-respondent, and the infant children, examined by Dr. Frieda Spady, Pediatric Psychiatrist, which was denied by Judge Harold M. Nitto, J. S. C. on July 29, 1980. (See Appendix, Order of Judge Nitto filed July 30, 1980, p. 46) This order denies petitioner's application to have the plaintiff-respondent father and the infant children to be examined by Dr. Frieda Spady.

Once again, on October 24, 1980, a motion was made by defendant's attorneys for the mother to to be allowed to speak freely with the children on the telephone and upon meeting them in public places. The children should be free of fear of being reprimanded physically or verbally by the plaintiff-respondent father when they speak to petitioner mother. This motion was denied and filed with the Court on November 12, 1980. (See Appendix, Order of Judge Nitto filed November 12, 1980, p. 49).

If an analogy may be made to the Federal Rules of Criminal Procedure, Rule 28(a) states that "nothing in this rule limits the parties in calling expert witnesses of their own selection."

For due process to follow through to civil matters, it is a blatant violation of due process rights for the petitioner to be denied a psychiatrist of her choice to be permitted to examine the parties involved, and testify in court pursuant to such examination.

3. The violation of due process rights as to denial of custody is compounded by the decision rendered by the Superior Court, where it was ordered that, (See Appendix,Judgment of Divorce, p 27),

> Defendant shall be entitled to visitation with the infant children of the marriage only under controlled and supervised conditions and under the auspices of an approved agency to be approved by the Court, and not otherwise.

As stated above, these arrangements for visitation have been non-existent to date, resulting in the total deprivation of petitioner-mother from seeing her three children with the sanction of contempt, if she tries to see them.

This total deprivation of contact with the childrens' mother by the Court, violates but the basic tenet of life, and the ideal that children should grow up influenced by both parents, learning about life through the guidance and love of both parents, whenever possible.

4. In July, 1981, the New Jersey Supreme Court "rendered a landmark custody decision, which represents[1] a radical departure from prior custody law in New Jersey and may well be a harbinger of

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1. Much of the following material is from an article in the New York Law Journal, by Carol Eisenberg, "Joint Custody Proceedings, Judicial Rulings Compared", New York Law Journal,August 18, 1982, p. 1.

things to come in other jurisdictions." [2] Continuing, the author states: "The New Jersey Supreme Court became the first court of last resort in the country to place its imprimatur on the concept fo shared legal and physical custody." The case is significant because it sets forth "guidelines for courts to use in determining whether or not to award joint custody" and also holds that

> (a) joint custody may be ordered over the objection of a parent;
> (b) an amicable relationship between the parents is not a prerequisite to an award of joint custody;
> (c) the capacity for cooperation in a joint custody arrangement should not be assessed in the emotional heat of the divorce; and
> (d) a parent who refuses to cooperate with a joint custody order may forfeit custody altogether.[3]

The New Jersey Supreme Court also reaffirmed the "common law policy in favor of affording children the love and affection of two parents rather than one.[4] The Court noted the current resurgence of interest in joint custody, and noted that sole custody "isolates the children from the non-custodial parent. . . and because of its win or lose nature, promotes custody disputes and

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2. Ibid.
3. Ibid.
4. Ibid.

post-decree tension.[5] The Court also found that joint custody provides "the child with access to both parents" and "is rooted in the assumption that children in intact homes develop attachments to both parents and that 'the severance of either of these attachments' is not in the child's best interests."[6] The Court also found that the child could experience "the intimate day to day contact" necessary to insure a meaningful parent-child relationship.

The Court stated that joint custody is a possibility even if neither party seeks it, as long as both are willing to care for the children.[7] Most important, the Court found that "the potential for cooperation should not be assessed in the 'emotional heat' of the divorce."[8]

Lastly, the court stated that if joint custody is feasible except for one or more of the practical considerations, the courts "should consider awarding legal custody to both parents with physical custody to only one" and to the other, visitation rights that are sufficiently liberal so as to "approximate, to the extent practicable, the shared companionship of the child and non-custodial parent that is provided in joint physical

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5. Ibid., 432 A. 2d at 65.
6. Ibid., 432 A.2d at 65, 66.
7. 432 A. 2d at 71.
8. 432 A. 2d at 71,72.

custody."[9] It also speaks of the "meticulous fact-finding required in custody cases."[10]

In the Beck case, the lower court required extensive testimony and cross-examination of the social workers, psychiatrists and psychologists and school psychologists and psychiatric social workers. The children did not want to live with their father, but with their mother with visitation with the father. Since more than two years passed since the trial court heard the testimony, the case was remanded back by the New Jersey Supreme Court for further fact-finding.

In light of this decision from the very same New Jersey Supreme Court that denied certification in this case, it is submitted that the New Jersey Supreme Court did not follow its own dictates in this case, and by in effect affirming the action of the trial court, concurred in the trial court's denial of custody and visitation without due process of law, and failed to remit this case back for further fact-finding. Accordingly, due process was denied by the courts, and the only remedy lies with this Court.

5. Depriving a mother of her children and all access to them without due process of the law is a Cruel and Unusual punishment, not only upon the petitioner-mother, but upon her children as well.

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9. 432 A. 2d at 72,73.

10. 432 A. 2d at 66.

Petitioner-mother herein has been deprived of her children and access to them as shown above, and is unconstitutional as it constitutes Cruel and Inhuman treatment prohibited by the Eighth Amendment.

The Court used "crash" investigations and outside reports and not one of the participants to these reports was placed under oath and subject to cross examination.

While this Court, in **Trop v. Dulles** (1958) 356, U. S. 86, 2 L Ed. 2d 630, 78 S. Ct. 590, stated that the exact scope of the phrase, "Cruel and Unusual" has not be detailed by this Court, and while research has not disclosed a case on point, we respectfully submit that the parting of the children from their mother, and the parting of the mother from the children, and the loss of custody under the circumstances herein was cruel and unusual punishment visited by the trial judge upon petitoner and her children, and this Court is petitioner's last hope for redress.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the judgment of the Supreme Court of the State of New Jersey, and if certiorari be granted, that the matter be returned to New Jersey for further proceedings.

Respectfully submitted,

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APPENDIX

A.

Opinion of the Court Below

SUPREME COURT OF NEW JERSEY
C-776 SEPTEMBER TERM 1981

FRED BERGER,
Plaintiff-Respondent,
vs.
GENEVIEVE BERGER,
Defendant-Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2445-80T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 16th day of June, 1982.

s/Stephen W. Townsend,
Clerk.

F I L E D: June 21, 1982

SUPREME COURT
June 21 1982
s/Stephen W. Townsend
D1 Clerk

B.

Amended Order of the Hon. Harold M. Nitto, filed May 20, 1980.

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION:
PASSAIC COUNTY
DOCKET NO. M 7155-79

FRED BERGER,
Plaintiff,

vs.

GENEVIEVE BERGER,
Defendant.

Civil Action
Amended Order

THIS MATTER being opened to the Court on the cross applications of the parties seeking temporary custody of the infant children of the parties marriage and seeking, each respectively, to have the other removed rom the marital-home, and the Court having heard the testimony of the parties in open court, and having had the benefit of various reports submitted by the Passaic County Probation Department and Diagnostic Center, and from an independent Court appointed psychiatrist, and from an independent Court appointed psychiatrist, and it appearing that Defendant no longer wishes to be represented by the law firm of Donald A. Rosenfelt, Esq., and having so stated to the Court, and the Court having directed Donald A. Rosenfelt, Esq. to take

part in the proceedings presently before the Court, and Donald A. Rosenfelt, Esq., having assisted Defendant throughout the Plenary Proceedings, and good cause appearing for the making and granting this Order, it is on the 16 day of May, 1980,

ORDERED, temporary custody respecting the three infant children of the marriage, namely Ronald, Lisa and Jeffrey, be and hereby is awarded solely to Plaintiff; and

IT IS FURTHER ORDERED, that each of the parties' application to have the other ordered out of the marital home, be and hereby is denied without prejudice to a re-application within ninety (90) days from the date hereof, at which time Plaintiff is directed to submit a plan to the Court for its approval respecting proposed modifications in the present living arrangements of the parties and children and with respect to counseling or other appropriate mental health care for the parties and/or their children; and

IT IS FURTHER ORDERED, that Defendant shall be entitled to reasonable visitation with the children of the marriage, the visitation with the children shall proceed under controlled supervised conditions by and through an agency approved by this Court; and

IT IS FURTHER ORDERED, that Plaintiff shall pay to Defendant the sum of $125.00 per week for the support and maintenance of Defendant, said payments

to be made through the Office of the Passaic County Probation Department; and

IT IS FURTHER ORDERED, that Plaintiff pay to Donald A. Rosenfelt, Esq., who is hereby relieved as defendant's attorney, a counsel fee in the amount of $2,694.00 plus costs in the amount of $100.00, or a total of $2,794.00, of which $1,000.00 has already been paid, leaving a balance due of $1,794.00, which Plaintiff is directed to pay.

s/ Harold M. Nitto

J.S.C.

C.

Judgment of Divorce filed January 13, 1981

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC
COUNTY, DOCKET NO. M-7155-79
PASSAIC COUNTY NO. 35498

FRED BERGER,

Plaintiff,

vs.

Civil Action

JUDGMENT OF DIVORCE

GENEVIEVE BERGER,

Defendant.

THIS MATTER coming on to be heard in the presence of William A. Feldman, Esq., appearing for the firm of LaSala, Feldman, Scher & Blaccavento, A Professional Corporation, attorneys for Plaintiff, and in the presence of Phillip L. Paley, Esq., appearing for Defendant, before Honorable Harold M. Nitto, and trial in open court having been had and the testimony of the parties having been heard and considered by the Court, and the Court having rendered its oral opinion on December 22, 1980, and the Court having heard and considered the proofs in this action and the argument of counsel, and it appearing that the Plaintiff and the Defendant were joined in the bond of matrimony on or about the 29th day of June, 1963, and that the Defendant has been guilty of extreme cruelty arose, the Plaintiff was

a bona fide resident of this State, and that the Plaintiff has continued so to be down to the time of the commencement of this action, and that the Plaintiff has been, for the one (1) year next preceding the commencement of this action, a bona fide resident of this State, and it further appearing that jurisdiction herein has been acquired by personal service of process upon the Defendant within this State;

IT IS thereupon on this 13th day of January, 1981, by the Superior Court of New Jersey, Chancery Division, Passaic County,

ORDERED AND ADJUDGED and such Court, by virtue of the power and authority of this Court, and of the acts of the legislature in such case made and provided, does hereby

ORDERED AND ADJUDGED that the Plaintiff, Fred Berger, and the Defendant, Genevieve Berger, be divorced from the bond of matrimony for the cause aforesaid, and that the parties and each of them, be freed and discharged from the obligations thereof, and that the marriage between the parties is hereby dissolved; and it is further

ORDERED that the Counterclaim filed on behalf of the Defendant seeking separate maintenance be and hereby is dismissed; and it is further

ORDERED that custody of the infant children of the parties' marriage, namely Ronald Berger, Lisa

Berger and Jeffrey Berger, be and hereby is awarded to the Plaintiff; and it is further

ORDERED that Plaintiff shall maintain Blue Cross/Blue Shield or equivalent medical and hospitalization insurance for the benefit of the infant children in his custody and shall otherwise be responsible for all medical and dental expenses respecting the children; and it is further

ORDERED that Defendant shall be entitled to visitation with the infant children of the marriage only under controlled and supervised conditions and under the auspices of an approved agency to be approved by the Court, and not otherwise; and it is further

ORDERED that any and all arrearages in alimony or support on the part of Plaintiff have been paid in full through December 22, 1980, and the Court finds that as of such date, no arrearages are due and owing by Plaintiff to Defendant; and it is further

ORDERED that Plaintiff shall pay to Defendant alimony in the sum of $175.00 per week, which shall be an all-inclusive support obligation, said amount specifically including and taking into consideration Defendant's anticipated future relocation expenses and apartment rental costs which the Court has taken into consideration herein; and it is further

ORDERED that Plaintiff shall pay to Defendant's attorney, Kirsten, Friedman & Cherin, Esqs., a reasonable counsel fee in connection with the trial of

this matter in the amount of $1083.50, inclusive of costs; and it is further

ORDERED that equitable distribution shall be effectuated as follows:

A. Plaintiff shall be entitled to retain the use and occupancy of the marital real estate at 198 Beech Terrace, Wayne, New Jersey, until the youngest child of the parties' marriage shall be declared to be emancipated, at which time the premises shall be placed on the open market for sale with the net proceeds of such sale being equally divided between the parties; nevertheless, Plaintiff shall be entitled to reimbursement for major maintenance and repair expenses out of Defendant's share of the said proceeds to the extent of one-half (1/2) of the said expenses which shall, in the interim, be Plaintiff's responsibility; Plaintiff shall keep and maintain records of all such repairs and expenses in order to substantiate same, failing which Plaintiff shall be deemed to have waived claim for reimbursement for such expenses;

B. The 1974 Volkswagon automobile presently registered in the name of Plaintiff shall be transferred to Defendant within ten (10) days from the date hereof; nevertheless, it shall be Defendant's obligation to effectuate at her own expense any repairs necessary with respect to said automobile; Plaintiff's 1979 Buick automobile is not subject to equitable distribution as

purchased subsequent to the commencement of the present action for divorce;

C. Plaintiff's pension rights in connection with a pension plan in which he participates at his place of employment, American Cyanamid Corportion, is held to be not subject to equitable distribution and shall be retained as his sole property.

D. With respect to the several life insurance policies now or formerly owned by the parties, Plaintiff shall be entitled to the Security Benefit Life Insurance Policy and to its cash surrender value of approximately $2,000.00, and Defendant shall be entitled to all of the equity and cash surrender value of the Metropolitan Life Insurance Policy, having a cash surrender value of approximately $1,700.00; Plaintiff shall be required to amend the beneficiary provisions of all existing life insurance policiies so as to name the infant children of the marriage as the irrevocable beneficiaries of all such policies, any documents required by either of the parties to effectuate the above division of insurance policies shall be supplied forthwith by the parties upon request by the other;

E. Defendant is entitled to the sum of $2,534.28, representing her fifty (50%) percent share on equitable distribution of a certain Dime Savings Bank account, said share to be paid at the rate of $50.00 per week until the sum of $2,534.28 shall have been paid directly to Defendant;

F. Any and all equity and/or savings in Plaintiff's credit union account at his place of employment shall be the sole property of Plaintiff;

G. Defendant shall be entitled to the additional sum of $895.00 as and for equitable distribution of her fifty (50%) percent share of a certain employee's savings account maintained by Plaintiff in connection with his employment, said sum to be paid at the rate of $50.00 per week commencing on the conclusion of the payments described above respecting the Dime Savings Bank account,; and it is further

ORDERED that Defendant shall be solely responsible for and shall pay all sums for which she alone is legally obligated to Sears, Singer's Department Store and Gelman's Department Store respecting purchases previously made contrary to the Orders of this Court, said outstanding claims being in the amountsof:

Sears	$1,352.48
Singer's Department Store	$746.98
Gelman's Department Store	$246.52

And it is further

ORDERED that Judgment be entered without costs.

s/ Harold M.Nitto, J.S.C.

D.

Stenographic Transcript of Decision
Dated March 7, 1980

FRED BERGER,	:	
	:	STENOGRAPHIC
	:	TRANSCRIPT
	:	OF
	:	DECISION
Plaintiff,	:	
v.	:	
GENEVIEVE BERGER,	:	
Defendant.		

Passaic County Courthouse
Paterson, New Jersey
March 7, 1980

B E F O R E:

THE HONORABLE HAROLD M. NITTO, J.S.C.

A P P E A R A N C E S:

WILLIAM FELDMAN, ESQ.,
Attorney for the Plaintiff

DONALD ROSENFELT, ESQ.
Attorney for the Defendant

JANE PARADISO, C.S.R.
Official Court Reporter
Passaic County Courthouse
Paterson, New Jersey

THE COURT: Mr. Berger, in his case, the plaintiff, filed for divorce and permanent custody of his three children in November of 1979. I find and determine that when a dispute arose in the evidence that was furnished by both the plaintiff and the defendant, as well as the witness produced by the defendant or an inconsistency developed in the evidence, the Court attempted to reconcile the dispute or the inconsistency where such reconciliation was possible. Where it wasn't possible, the Court accepted so much of the evidence as was by reason, logic and corroboration by other evidence of record known by the Court to be reliable, demonstrated to be worthy of belief and rejected so much of the evidence that did not meet the standard to the end that fairness was achieved.

I find in this case that in addition to Mr. Berger filing his application for divorce and Mrs. Berger filing her counterclaim, that both seek the custody of the children and both seek the marital premises in order to control the well being of these children.

I find that Mr. Berger does demonstrate a continuing concern for the welfare of his children and I find also that he demonstrates a well controlled approach to the management of the welfare of the childrens' interests, not only on the behavioral overtones to the children, but also, with regard to their school, their social, as well as their maturity that will develop.

THE COURT: The Court marked in evidence the reports of both the social services, Probation Department, as well as the psychiatric report of the Passaic County Diagnostic Center, as well as the findings, both objectively and subjectively of one Dr. Herbert B. Barkin. With this information at hand in evidence and the Court attempting to, as I indicated, to find out those facts of evidence that would assist
this Court in making its determination, the Court had an opportunity to observe the testimony of the witnesses which is the paramount function of the Court when hearing evidence.

I find and determine that Mrs. Berger presents a strong problem of adjustment difficulty; that she presents a strong problem of a significant nature in the management of her family and her social interaction therein.

I further find and determine that the findings of this Court certainly indicate that the children are in need of emotional support and perhaps professional counselling. I find that counselling is indicated not because of the fact that there are deficiencies of any mental disorder in any of the children, but the fact is that there is evidential proof that there are adaptive problems that are developing. The adaptation of the environment by the children to their school, to their individual parents now presents itself with a problem.

I further find and determine by the testimony of the witness Mrs. Berger, that she did not reflect to the Court a coherent or consisting pattern of ability to parent these three children. I find as a fact on the contrary that Mr. Berger presented no evidence of instability.

I find the determine that there is no evidence of abuse by him of his children and I further find and determine that there is no evidence of incestuous thinking or behavior. It is true that I find and determine that there might have been physical contact between the two and the children, perhaps, or a nature to be more of exacerbating as distinguished from a mind that was suffering from the behavioral problem now the evidence of the pornographic material in question. There is no question about presenting poor judgment. No question about the fact that this certainly is not the kind of stuff that warrants a severe reprimand that you don't leave these kind of things floating around, but what is more important, even though there was this evidence of poor judgment, there is no evidence of any psycho pathology in the use of the material.

Now, I also find and determine that, though, this expression by Dr. Barkin who is a diplomat in psychiatry, I also find in the report in evidence by the Passaic County Diagnostic Center, findings that are almost indentical from Dr. Barkin. I would like to point out that in the Diagnostic report, the evidence showed

that Mrs. Berger's personalty requires psychiatric treatment. I further find that their diagnostic evaluaton, they feel that it is most difficult for Mrs. Berger at this stage of the proceedings to warrant the custody controls such as she seeks.

Independent of these two professional reports and in addition to the Court making its own individual observation of the demeanor of the witnesses, the Court wishes to point out that the social report made by the authorities in reporting to the Court which report appears to have given the defendant some concern, I find to be quite accurate and quite consistent with the evidence adduced both from the Diagnostic Center as well as Dr. Barkin. In point of fact, I quote on page 6, "The defendant appeared to be extremely high strung and excitable. She failed to give definitive answers to many questions presented to her and appeared to be lashing out at the plaintiff rather than explaining her behavior with respect to the children. In summary, it would appear that Mr. Berger, the plaintiff, is a more controlled and sensible person with respect to his children, that he does have a plan for caring, housing of his children and shows his understanding of the emotional needs of his children and he's prepared to seek outside help as quickly as possible."

Now, these are the findings of facts with regard to the issues and whether or not they apply to the application for the Roberts hearing as well as whether

or not there is sufficient evidence to make a determination on temporary custody.

Now, under the law, I'm obligated to place on the record the testimony with regard to the children and without further adieu, Miss Reporter, I will direct you to read into the evidence exactly what you just took in my chambers with regard to the children. You may read directly from the record as to what was said by the Court and what was said by the children if you will.

(At this time, the record is reread of the proceedings in camera.)

THE COURT: Now, in addition to the requirement to put that on the record so that the record shows the Court did take into consideration the children's wishes, we are also confronted now with main issue of the Roberts hearing. The application was brought on by the defendant against the plaintiff to see that he is removed from the premises, particularly, because the defendant thinks that her safety, as well as the children should be afforded and to make sure that the harm that has been exercised by the plaintiff, so she charges, or what harm may evidence in the future should be completey foreclosed by him being removed from the home. There is no question that the environmental factors are negative. There are no questions that the environmental factors are acrimonious, but bear in mind, that I have before me the obligation to provide

for what is the best interest of the children and in that regard, it is the obligation of the Court to weigh many factors so much so that sometimes the Court is strained almost to a point of attempting to call upon the reserve judgment. Sometimes, I wonder if the Court is given that kind of power. I do know that the children have got to be given an opportunity to love and to respect each parent. Conversely, the parent has the obligation to see to it that each child is treated with a degree of dignity with regard to the opportunity of seeking its own emotional and psychological health to attain some degree of maturity at its own speed; that it is the function of the parents to see to it that these children grow up to be good citizens and to adopt the policy of live and let live. It would be a very simple thing if this was just the failure of two people who lost their way and became uncontrolable people. It would be very difficult for me to make a decision. On the other hand, the difficulty in this case is compounded because there is a certain streak of emotional disturbance that is running through this environment, a kind of a disturbance that borders in the area of the unknown. There is a certain type of possible pathology that may be developing, that were the Court to move in any definitive action to throw one member out against the other, I'm afraid would not be to the best interest of the children.

I have no doubt in my mind that some of the infractions that we have charged against both parents,

one in the area of custody, the other in the area of physical abuse, has really not caused any pathological problems to those children yet fortunately.

I find and determine too that, perhaps Mrs. Berger needs an awful lot of help and I'm not going to take it upon myself at this stage of the proceeding to add burdens upon already strained emotional relationships and then add to the burdens of these children by lashing into the areas of parental supervision, parental control. So we're going to bring about a rupture as best we can. I'm going to deny your application to have Mr. Berger removed from the home. I'm also going to grant temporary custody of the children to Mr. Berger and the visitation with the children shall proceed under controlled supervised conditions by and through an agency approved by this Court and a report will have to be done and given to me within ninety days from today on some program of counselling with these children. I strongly suggest that the litigants avail themselves of the professional reports and cooperate with their findings to make sure that the children are given a chance to circumvent the emotional storm that presently exists in this case.

Now, the father and these children, he is going to be obligated to carrying the entire expense of this situation. I'm going to strongly suggest to the father that he has custody now, that perhaps voluntarily, you may make arrangements in place of abode different

from your present home. By the same token, I am not going to direct Mrs. Berger to leave that house until final hearing and we see what this is all about. I don't believe for one moment that we are completely devoid of help in this type of a case. I think there is enough professionalism here and intelligence to start systematically with the Court's ruling, to cooperate with it, so that the children are given a chance.

Insofar as the adults are concerned, I can only suggest that you both also avail yourselves of professional guidance so that you can weather the storms and the weeks ahead. I'm satisfied that having seen these children and weighed their wishes against their best needs and analyzing the facts in relation to the Court's power under our general custody statutes and cases made and provided, that I do believe this is the right course at this time. Present your judgment and I will sign it.

MRS BERGER: Your Honor—

THE COURT: You will have to address yourself, Ma'am, through your attorney.

MR. ROSENFELT: That is the problem. As your Honor indicated before, Mrs. Berger did not want me to continue so I would ask the Court's permission—

THE COURT: Until the order is actually signed and disposed of, then I'll entertain your application. Yes, Ma'am?

MRS. BERGER: You know, Mr. Berger, it has been ascertained that he has had a sexual incest relationship.

THE COURT: There is not further material before this Court. The Court has made its decision and I will respectfully suggest you consult with the rules of civil procedure and in the alternative, to obtain new counsel.

MRS BERGER: How abut with regard to my money, I can't exist on $25.00.

THE COURT: That is the next question I was going to address myself to. There is no proof in front of me with regard to her needs. However, there is no question about the fact she is going to have to be supported.

MR. FELDMAN: May I be heard?

THE COURT: Sit down, Mrs. Berger.

MR. FELDMAN: At this time, the Bergers are living together, as the Court knows, and apparently will for the immediate future continue. At the present time, I believe Mrs. Berger is being provided for, I'm certain of it, by Mr. Berger. I would ask that the present arrangements be continued especially since there are limited finances and especially in view of the fact that further counselling costs are going to be incurred, and perhaps, additional living expense costs will be incurred.

THE COURT: Why don't I make a temporary order now just based on the observation of the fact she has to live in her home, her inability to work, the fact that your client makes over $41,000 a year. I will enter an order of $125 a week in favor of the defendant to be paid through the Probation temporarily.

MR. FELDMAN: I would ask the Court reconsider that. I think that would be an error in terms of the allocation of the funds here. At the present time, the parties are on limited finances especially with counsel fees and other costs being incurred.

THE COURT: She has got to start somewhere to some measure of independence and I don't intend to make her out to be a chattel. $125 a week until further order of this Court. These are going to remain with me. They'll remain in custodia legis.

MRS. BERGER: With regard to the money I had to borrow when he left home, when he left the kids—

THE COURT: There is no further issue before this Court, Ma'am. You will have to consult with counsel at subsequent proceedings.

*****

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-PASSAIC
COUNTY, DOCKET NO. M-7155-79

FRED BERGER,	:	
	:	
Plaintiff,	:	
v.	:	CERTIFICATE
	:	
	:	
GENEVIEVE BERGER,	:	
	:	
Defendant.	:	

I, Jane Paradiso, an Official Shorthand Reporter of the State of New Jersey, certify the foregoing to be a true and accurate transcript of the proceedings in the above entitled action.

s/ JANE PARADISO, C. S. R.
Official Court Reporter

Dated: April 8, 1980

E.

Letter of Monroe Y. Mann dated January 12, 1982

January 12, 1982

State of New Jersey
Department of Human Services
Division of Youth and Family Services
370 Broadway
Paterson, New Jersey 07501

Attention: Mr. Stanley Wojtowick

Re; Berger, Ronald, Lisa & Jeffrey

Dear Mr. Wojtowick:

Thank you for your letter of December 22, 1981. I certainly do appreciate the effort you are making to help resolve this tragic situation. However, you did not address one of my principal points, namely, the statement made to the child, "if you wrote these letters you need to see a psychologist" statement, nor did it address the facts set forth by the child with regard to the conduct of the father with respect to language used.

It is most difficult to ask Mrs. Berger to cooperate in order to provide proper supportive service to a child adversely affected the break-up of a marriage, using your language, since under the terms of the Order of Judge Nitto, Mrs. Berger's visitation with the children is virtually non-existent. It would be most helpful if visitation can be arranged through your office and through your good services and perhaps a broadening of visitation could be arranged, with a view towards ultimately allowing Mrs Berger to at least share custody with

the children and extended visitation, and perhaps you could report this back to the Court.

Thanking you, I am

Sincerely yours,

s/ MONROE YALE MANN

MYM: enb

F.

Order of Judge Nitto filed July 30, 1980.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, PASSAIC
COUNTY.
Docket No. M-7155-79

CIVIL ACTION

ORDER

Plaintiff

FRED BERGER,

vs.

Defendant

GENEVIEVE BERGER.

THIS MATTER coming on to be heard before Honorable Harold M. Nitto, J.S.C.; on July 11, 1980, upon application of Amdur, Friedrich, Marlowe, Hauptman & Kilhenny, Esqs. attorneys for defendant, Jay J. Friedrich, Esq., appearing in the presence of La Sala, Feldman, Scher & Flaccavento, Esqs., attorneys for plaintiff, William A. Feldman, Esq., appearing upon argument of counsel, Certifications and good cause being shown;

IT IS on this 29 day of July, 1980;

ORDERED as follows:

A. Arrearages through May 30, 1980, shall be established at $1,625.00. Plaintiff shall pay to the defendant the sum of $300.00 before 4:00 p.m. on July 11, 1980. Thereafter he shall pay the sum of $50.00 per week until the arrearages have been totally paid. Plaintiff shall further continue to pay the $125.00 per week.

B. Plaintiff shall cease and desist from all acts and statements in front of or to the children which belittles or otherwise degrades the defendant and shall do what is necessary to nurture love and affection between defendant (mother) and the infant children of the marriage.

c. Defendant's application to have the plaintiff and the infant children examined by Dr. Frieda Spady; Pediatric Psychiatrist, shall and is hereby denied as defendant was seeking the doctor to treat rather than to prepare and submit a report as to the psychiatric condition of the party or the children.

s/ Harold M. Nitto, J.S.C.

G.

Excerpt from Affidavit of Defendant in Motion dated October 25, 1980.

13. It is respectfully requested that I be allowed to speak freely with the children on the telephone and when I meet them in public places. The children should be free of fear of being reprimanded physically or verbally by the plaintiff when they speak to me.

H.

Order of Judge Nitto on Cross-Motions returnable October 25, 1980.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC
COUNTY. DOCKET NO. M-7155-79
PASSAIC COUNTY NO. 35498

FRED BERGER,	:	
	:	
Plaintiff,	:	
	:	Civil Action
	:	
	:	ORDER ON CROSS-MOTIONS
	:	Returnable
	:	October 25, 1980
	:	
vs.	:	
	:	
GENEVIEVE BERGER,	:	
	:	
Defendant.	:	

THIS MATTER being opened to the Court on Cross-Motions filed on behalf of the respective parties, A. Michael Rubin, Esq., appearing for the Firm of Gavenda, Rubin & Connelly, attorneys for the Defendant, Genevieve Berger, and William A. Feldman, Esq., appearing on behalf of the firm of LaSala, Feldman, Scher and Flaccavento, A Professional Corporation, attorneys for Plaintiff, Fred Berger, and the Court having read and considered the moving papers and supporting documents filed on behalf of both parties, and good

cause appearing for the making and granting of this Order,

IT IS on this 12th day of November, 1980

ORDERED that Plaintiff's motion for reconsideraton and modification of the Court's prior Order respecting the fixing of arrearages in Defendant's alimony, which Order was dated July 29, 1980, be and hereby is denied, except to the extent that the arrearages as therein fixed shall be reduced and Plaintiff, Fred Berger, shall be credited to the extent of the total sum of $1,082.97, which credit to Plaintiff is based upon a $500 payment made directly to Defendant during or about the month of April 1980, and a second sum of $582.97 representing charges made by Defendant in violation of the prior Orders of this Court, thus, misusing certain credit cards in Plaintiff's name; and it is further

ORDERED, that any credit cards in Defendant's possession involving Plaintiff's credit or name shall immediately be destroyed or surrendered by her, through her attorney, to Plaintiff's attorney, so that they may be cancelled; and it is further

ORDERED that Defendant's Cross-Motions seeking miscellaneous items of relief is hereby denied in all particulars.

s/ Harold M. Nitto, J.S. C.

L.

Order No. 1 of Judge Nitto dated January 29, 1980

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

Plaintiff

FRED BERGER

Docket No. M-7155-79
CIVIL ACTION

ORDER

vs.

Defendant

GENEVIEVE BERGER

THIS MATTER being opened to the Court by William Feldman, Esq., Attorney for the Plaintiff, FRED BERGER with Richard J. Kozel, Esq., of the office Donald A. Rosenfelt, Esq., Attorney for the Defendant, GENEVIEVE BERGER, appearing on cross applications, and the Court having commenced a Robert's Hearing and having determined that the following Order will best serve the interest of all parties concerned, for good cause shown

It is on this 29th day of January, 1980

ORDERED, that both the Plaintiff and Defendant and the three (3) infant children born of the marriage are hereby ordered to appear at the office of

Dr. Herbert Barken, located at 743 Northfield Avenue, West Orange, New Jersey on the 6th day of February, 1980 at 9:00 A. M. to undergo a psychiatric evaluation; and it is further

ORDERED, that said evaluation should be completed on an emergency basis and the report forthwith filed with the Court to be made available to counsel; and it is further

ORDERED, that the Plaintiff shall be solely responsible for the costs of this evaluation which shall include the parties and the three (3) infant children; and it is further

ORDERED, that all rights are hereby reserved as to a Robert's determination to be presented to the Court at a date and time to be set after receipt by the Court of Dr. Barken's evaluation; and it is further

ORDERED, that each party shall take appropriate action upon a telephone call being received from counsel in this matter.

s/ Harold M. Nitto, J. S. C.

I hereby consent to the form
and entry of the within Order.

s/ William Feldman, Esq.
Attorneyh for Plaintiff

s/ Richard J. Kozel, Esq.
Attorney for Defendant

J.

Order No. 2 of Judge Nitto dated January 29, 1982.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC
COUNTY. Docket No. M-7155-79
County No. 35498

FRED BERGER,

Plaintiff,

vs.

GENEVIEVE BERGER,

Defendnt.

Civil Action

ORDER

THIS MATTER coming before the Court by way of Orders to Show Cause filed by both Plaintiff and Defendant herein for various relief and this matter being heard by the Court on January 25, 1980 in the presence of Frank J. Flaccavento, Esquire, of the Firm of La Sala, Feldman, Scher & Flaccavento, a Professional Corporation, attorneys for the Plaintiff, and in the presence of Donald A. Rosenfelt, Esquire, attorney for the Defendant, and the Court having read and considered the Verified Complaint, Answer and Counterclaim and other Affidavits and Certifications filed in connection herewith, and the Court having heard

and considered the arguments of counsel and good cause appearing for the making and granting of the within Order,

It is on this 29th day of January, 1980,

ORDERED that the Probation Department of Passaic County shall immediately conduct a social, diagnostic and psychiatric evaluation of the Plaintiff, Defendant and the three childrn born of the marriage; and it is

FURTHER ORDERED that the psychiatric evaluation shall be conducted by a psychiatrist of the Probation Department, and it is

FURTHER ORDERED that the Plaintiff shall pay the cost of such evaluation; and it

FURTHER ORDERED that the Probation Department of Passaic County shall conduct the social investigation of the parties hereto and shall arrange for the appointments and other necessary scheduling for the psychiatric and diagnostic evaluations and that all such evaluations and investigations shall be done on a "crash" basis to be completed within seven (7) days of the within Order; and it is

FURTHER ORDERED that on application by both Plaintiff and Defendant this Court shall conduct a Roberts Hearing on Tuesday, January 29, 1980 at 9:00 a. m. to determine whether either party shall be restrained and enjoined form entering the marital premises; and it is

FURTHER ORDERED that all credit cards held by the parties shall be destroyed forthwith and any charges or other pledge by the Defendant of the Plaintiff's credit hereafter shall not be the responsibility of the Plaintiff, but shall be the sole responsibility of the Defendant; and it is

FURTHER ORDERED, that all applications for Pendente Lite Relief shall be stayed until the outcome of the Roberts Hearing to be moved concurrently with the decision thereof; and it is

FURTHER ORDERED that the three (3) children born of the marriage are hereby declared wards of this Court until further Order of this Court and all inquiries with respect to the children and concerning their welfare shall t directed to this Court; and it is

FURTHER ORDERED that pending the outcome of the Roberts Hearing and until further order of this Court neither parent shall have visitation with the said children.

s/ Harold M. Nitto, J.S.C.

CONSENT IS HEREBY GIVEN
TO THE FORM AND ENTRY OF
THE WITHIN OFDER.

S/ DONALD A. ROSENFELT, ESQ.
ATTORNEY FOR DEFENDANT

K.
Excerpt of Transcript of Trial dated December 16, 17 and 18, 1980.

C-1 in evidence was a probation department report dated sometime in February, 1980. C-2 in evidence was the July 23rd, 1980 report of the New Jersey Division of Youth and Family Services. C-3 in evidence was the report of Doctor, I believe it's Harold Barken—

THE COURT: Herbert.

MR. FELDMAN: Herbert Barken, excuse me. That report was dated February 25, 1980.

C-4 in evidence was the July 16th, 1980 transcript of the Court's interview with the infant children of the marriage. That was in evidence and C-5 in evidence was the report of Dr. Robert Goodkin dated July 21st, 1980 which was in the form of a certification and plaintiff continues to reply on these items which, I understand are still in evidence for the purpose of this hearing.

MR. PALEY: Your Honor, with respect to C-1, the probation report, I object to that being marked into evidence.

THE COURT: Mr. Paley, you want it? They're right here.

MR. PALEY: Oh, yes, Sir.

THE COURT: Look at it.

MR. FELDMAN: I'd like to make it clear for counsel's benefit that these items are not being offered

in evidence now. They have already been offered and accepted into evidence by this Court.

MR. PALEY: Well, first, your Honor, if they've been maked into evidence in a preliminary proceeding in this matter—

THE COURT: A prior proceeding, not preliminary.

MR. PALEY: Or prior, that doesn't necessarily mean that they are evidential as to the issues that are in dispute today. Now, with respect to the probation report, it's part of the file, anyway. The Court has seen it. I have no objection to it going into evidence except with respect to any conclusion which the probation officer would reach. I don't believe that's evidential. The observations of the probation department, the Court is aware of anyway.

THE COURT: Well, you know how to handle that.

MR. PALEY: Well, yeah, but if it's —

THE COURT: You know what your remedy is there.

MR. PALEY: But if it's marked in evidence—

THE COURT: But under Rule 4:42, that report can go in, whatever is involved, including the conclusions.

MR. PALEY: Well,—

THE COURT: That 's what the rule says.

MR. PALEY: For the reasons stated I object to it.

THE COURT: Okay, go ahead.

MR. PALEY: Second, with respect to the report of the Division of Youth and Family Services, this is a final hearing. This is a hearing with respect to permanent custody to the extent that custody is ever permanent. I therefor object to the report dated July 23rd, 1980 with respect to any—being evidential in these proceedings. It's now almost six months later. The same is true with respect to C-3 and C-5, the reports of the Doctors, particularly Dr. Goodkin's report, was a report which was not an evaluation of all of the parties in this matter, but was simply an analysis of the children a report of the interviews with the children. For that reason I object to that.

Dr. Barken's report I object to, if Dr. Barken is not going to be here, for the reason that I have no opportunity to cross-examine him.

Office - Supreme Court, U.S.
FILED
OCT 12 1982
ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO. 82-536

GENEVIEVE BERGER, Petitioner,

-against-

FRED BERGER, Respondent.

SUPPLEMENTAL APPENDIX TO PETITION

MONROE YALE MANN
Counsel for Petitioner
316 Westchester Avenue
Port Chester, New York 10573
914 939-2000

WILLIAM A. FELDMAN
Counsel for Respondent
11 Brighton Road
Clifton, New Jersey 07012
201 777-7722

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

A-2445-80 T1

FRED BERGER,

Plaintiff-Respondent,

v.

GENEVIEVE BERGER,

Defendant-Appellant.

Argued March 23, 1982—Decided Apr. 1, 1982

Before Judges Michels, McElroy and J. H. Coleman.

On appeal from the Superior Court of New Jersey, Chancery Division, Passaic County.

Phillip Lewis Paley argued the cause for appellant (Kirsten, Friedman & Cherin, Attorneys; Mr. Paley on the brief).

William A. Feldman argued the cause for respondent.

PER CURIAM.

The judgment of the Chancery Division entered in this matrimonial matter is affirmed substantially for the reasons expressed by Judge Nitto in his oral opinion of December 22, 1980.

We are firmly convinced from our review of the record in its entirety and the arguments presented that the judgment of the trial court is based on findings of fact which are adquately supported by evidence, and

that all issues of law raised are clearly without merit. R. 2:11-3 (e) (1) (A) and (E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

s/ Elizabeth McLaughlin
Clerk